Section 4 of the Rubber Act, 1947 read with rule 4 (1) of the Rubber Rules 1955, the members of this House do proceed to elect, in such manner as the Speaker may direct, two members from among themselves to serve as members of the Rubber Board, subject to the other provisions of the said Act and the Rules made thereunder"

MR. DEPUTY-SPEAKER : The question is :

"That in pursuance of sub-section (3) (e) of Section 4 of the Rubber Act 1947 read with rule 4 (1) of the Rubber Rules 1955, the members of this House do proceed to elect, in such manner as the Speaker may direct, two members from among themselves to serve as members of the Rubber Board, subject to the other provisions of the said Act and the Rules made thereunder"

The motion was adopted

14.18 hrs.

(iii) Coffee Board

[English]

THE MINISTER OF STATE OF THE MINISTRY OF COMMERCE (SHRI BOLLA BULLI RAMAIAH) : I beg to move :

"That in pursuance of sub-section (2) (b) of Section 4 of Coffee Act, 1942 read with rule 4 (1) of the Coffee Rules, 1955, the members of this House do proceed to elect, in such manner as the Speaker may direct, two members from among themselves to serve as members of the Coffee Board for a period of three years commencing from the date of notification by the Government, subject to the provisions of the said Act and the Rules made thereunder."

THE DEPUTY-SPEAKER : The question is :

"That in pursuance of sub-section (2) (b) of Section 4 of Coffee Act, 1942 read with rule 4 (1) of the Coffee Rules, 1955, the members of this House do proceed to elect, in such manner as the Speaker may direct, two members from among themselves to serve as members of the Coffee Board for a period of three years commencing from the date of notification by the Government, subject to other provisions of the said Act and the Rules made thereunder."

The motion was adopted

14.19 hrs.

THE BUSINESS ADVISORY COMMITTEE

Motion Re : Second Report

[English]

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF TOURISM (SHRI SRIKANTA JENA) : I beg to move :

"That this House do agree with the Second Report of the Business Advisory Committee presented to the House on the 18th July, 1996."

MR. DEPUTY-SPEAKER : The question is :

"That this House do agree with the Second Report of the Business Advisory Committee presented to the House on the 18th July, 1996."

The motion was adopted

14.20 hrs.

STATUTORY RESOLUTION RE : DISAPPROVAL OF SUPREME COURT AND HIGH COURT JUDGES (CONDITIONS OF SERVICES) AMENDMENT THIRD ORDINANCE, 1996

AND

SUPREME COURT AND HIGH COURT JUDGES (CONDITIONS OF SERVICE) AMENDMENT BILL

[English]

MR. DEPUTY-SPEAKER : Now we shall take up further discussion on the Resolution moved by Shri Guman Mal Lodha

Shri Vinay Katiyar	Absent
Shri Sontosh Mohan Dev	Absent

Dr. Guman Mal Lodha may reply to the debate.

JUSTICE GUMAN MAL LODHA (Pali) : Hon. Deputy Speaker, Sir ... *(Interruptions)*

SHRI NITISH KUMAR (Barh) : Sir, I think the Minister will reply first and then, at the end, Shri Lodha will reply.

MR. DEPUTY-SPEAKER : All right Shri Lodha, I think you will be the last speaker. The Minister may reply now.

THE MINISTER OF STATE OF THE DEPARTMENT OF LEGAL AFFAIRS, LEGISLATIVE DEPARTMENT AND DEPARTMENT OF JUSTICE (SHRI RAMAKANT D KHALAP) : Hon. Deputy-Speaker, Sir, I have moved this simple Bill for enhancing the quota of petrol to the

Supreme Court and High Court Judges from 150 litres to 200 litres and some increase in the sumptuary allowance from Rs. 1250 per month to Rs. 4000 per month, from Rs. 750 per month to Rs. 3000 per month, from Rs. 500 per month to Rs. 3000 per month and from Rs. 300 per month to Rs. 2000 per month. This was such an innocuous Bill that personally I was not expecting the kind of debate that went on on this Bill.

The House has taken into consideration the entire gamut of the Judiciary...*(Interruptions)*.

[Translation]

SHRI RAMASHRAYA PRASAD SINGH (Jahanabad): Mr. Deputy Speaker, Sir, we have been discussing the Bill for the last three days. I too want to speak on it. That was why I used to sit till quite late at night in the House. Shri Nitish Kumar, when he was in the Chair, had answered me that I would be given two minutes time to speak. Therefor, I request that I may kindly be given two minutes time to speak on this Bill.

MR. DEPUTY-SPEAKER: All night, you may speak. Thereafter the hon. Minister will speak.

SHRI RAMASHRAYA PRASAD SINGH: I do not want to reiterate what has already been said on this Bill by other Members. Yesterday, Shri Nitishji, our senior Member, pointed out that many Members went even beyond the scope of the Bill. However, we shall have to first understand as to why we do so. When this Bill came up here, many Members were anxiour to speak on it.

Our democracy is rests on three pillars, namely the Judiciary, Executive and the Legislature. When any of these pillars starts crumbling, it becomes a cause for concern for the people. As far as this Bill is concerned, we have two categories of people in country. One category is full of praise for our judges while some other people, who are quite a few in number, are of the opinion that the judges have, of late started intruding into the jurisdiction of the Executive. But the fact is that if the executive had been performing its functions satisfactorily, the need for the intervention of the Judiciary would not have arisen. In Patna, it is the duty of the corporation to have the garbage removed but for this work also, the High Court Judge had to issue orders. From the very beginning, the executive and judiciary got mixed up, to the determined of the country. Now even people who are least interested in politics - agricultrists and other living in villages - are openly saying that if the judiciary had not intervened, who would have checked the type of scams and scandals taking place in the country. To the great surprise of the people Shri Kalpanath Rai, Shri H.K.L. Bhagat, and the son of Shri Ram Lakhan were put behind the bars and a notice served on the former Prime Minister. Had the judiciary not been there no harm would come to these people. It is a very important issue. But now some people raising an accusing finger towards the judiciary. Some ask that when the Ayodhya episode took place, why did't they obey the orders of the judiciary? Now they are out to undermine the importance of the judiciary ...*(Interruptions)* Mr. Deputy Speaker, Sir, I have read in the newspapers that 18 MLAs of Bihar have, without allotment...*(Interruptions)*

SHRI S.P. JAISWAL (Varanasi): Sir, I am on a point of order...*(Interruptions)*

SHRI RAMASHRAYA PRASAD SINGH: What is the punishment for it? You have violated the orders of the judiciary. *(Interruptions)* Now, you need not press any point...*(Interruptions)*

MR. DEPUTY SPEAKER: He is raising a point of order. Please listen to him.

SHRI RAMASHRAYA PRASAD SINGH: I have been given two minutes' time. Please let me speak.

MR. DEPUTY SPEAKER: Two minutes' time is already over.

SHRI RAMASHRAYA PRASAD SINGH: Will it not be wise to hear me first?

MR. DEPUTY SPEAKER: Under which rule are you raising a point of order?

SHRI S.P. JAISWAL: I will let you know the rule. But I would first like to know. *(Interruptions)*

MR. DEPUTY SPEAKER: Please sit down.

(Interruptions)

MR. DEPUTY SPEAKER: Ramashraya Prasad Singhji, you please continue.

SHRI RAMASHRAYA PRASAD SINGH: Mr. Deputy Speaker Sir, in today's newspaper it has been reported that 18 M.L.As. of Bihar took possession of the house of the Central pool without allotment. I want to know "Where was the executive exist?" Where does the legislative exist? I also would like to tell you that they have occupied the houses of the pool of the High Court. A Cabinet Minister in this House has also occupied the house. People talk big here. Do you think all the Members elected to this House constitute the exam? No, they are all postmasters in their respective fields and are responsible for the present sorry state of affairs in the country. The elections have proved disastrous for the legislative. It is only by conducting free and fair elections that we can cannot comption in the country. So, we should give the judiciary a free hand. If you have a nexus with the police and other officers and thus win the elections. Do you think democracy can revive in our country in this manner? No, it cannot survive.

I have been repeatedly pointing out all these things from the 8th Lok Sabha to this 11th Lok Sabha. I am not afraid of anybody. I have all the love and respect for the country. Sir, if the present Government claims to be

Government of the poor, and Shri Deve Gowda says that there are two faces of India i.e. Urban India and the Rural India, then they should investigate now the politicians came to possess such a vast wealth and how the corruption in the country assumed present dimensions. In times to come, we will have such MPs here whose deeds would be investigated even after their death.

MR. DEPUTY SPEAKER : Please conclude.

SHRI RAMASHRAYA PRASAD SINGH : I am concluding, Sir, what the judiciary is doing in public interest. Keeping in view the conditions obtaining in the executive and legislature, it is only the judiciary which is running the county. If the judiciary takes bold steps without fear, we can save the country from these political and bureaucratic maraunders who have made this country a sanctuary for themselves and looking it without compunction.

[English]

SHRI RAMAKANT D. KHALAP: Mr. Deputy Speaker, Sir, I was mentioning that the debate on this Bill in this House has covered the entire gamut of judiciary relations between the Judiciary and the Executive and relation *inter se* between various pillars of democracy Executive, Judiciary and Parliament. While speaking on this Bill, certain very important points have emerged. I will make an attempt to respond to most of these points.

I will first take the objection raised by hon. Members Shri Lodha, to the Ordinances which were promulgated from time to time. We all know, Sir, that since Parliament was not in session, the first Ordinance which was promulgated on 11th January, 1996, the Supreme Court and High Court Judges (Conditions of Service) Amendment Orders, 1996, came before the House as the Supreme Court and High Court Judges (Conditions of Service) Amendment Bill, 1996. It was introduced on 29th February, 1996. This Bill could not be considered and passed by the House before it was adjourned *sine die* on 12th March, 1996. Further this Bill lapsed on the dissolution of Tenth Lok Sabha. Since by this Ordinance, the privileges available to the judges were already enhanced, it was necessary to once again bring another Ordinance and it was promulgated on 27th March, 1996.

Sir, Eleventh Lok Sabha commenced from 22nd May, 1996, but no legislative business was transacted and the House adjourned *sine die* on 29th May, 1996. We re-assembled for the second time during the session on 11th June, 1996 and the House was again prorogued without transacting any legislative business. Therefore, the Supreme Court and High Court Judges (Conditions of Service) Amendment Third Ordinance, 1996 was re-promulgated on 21st June, 1996. Now, this Bill has come for the consideration of this House. All this makes it amply clear that there has not been any deliberate attempt to misuse the ordinance making power provided under the Constitution. The circumstances were such that such Ordinances had to be issued and now this Ordinance is being replaced by the present Bill which is placed for the consideration of the House.

While speaking on this Bill, learned Member made a scathing attack on an erroneous presumption that after 10 years, for the first time, the allowances of the judges of the Supreme Court and High Court are being increased.

This argument was used to argue that the Government has all along, been turning a blind eye towards the conditions of service of the judges of the High Courts and the Supreme Court. I must correct this misunderstanding and for the benefit of the House, I must say that time and again, beginning from 1987, the benefits in terms of allowances etc., available to the judges of the Supreme Court and the High Courts were increased originally in 1987 after the first Amendment which I have referred to. The allowance regarding free furnishing of accommodation was raised. Then, the scale of free furnishing was raised and water and electricity allowances were increased. In 1990, provisions for L.T.C., packing allowance on retirement, post-retirement allowances etc. were made. In 1991, allowance relating to free furnishing, daily allowance, water and electricity allowances were increased. The traveling allowance was also increased. In 1992, once again it was increased. Then, it was increased in 1993, 1994 and 1995. Now, we have increased it in 1996.

So, time and again changes have been made. The ceilings fixed were increased. The amounts available to them by way of allowances were increased and several other facilities have been granted. The entire information is available. If need be, I can make it available for the benefit of the House. It can also be laid on the Table of the House. If you permit me, I will lay it on the Table of the House. Therefore, the argument that per day Rs. 17/- or Rs. 10/- are given - which was the argument of Shri George Farnandes and Shri Nitish Kumar - cannot be considered in isolation. I would request the hon. Members to consider this in the context of the changes which have been made from time to time and the enhancement which has been effected in the various allowances and other improvement in the conditions of service of the judges.

SHRI GEORGE FERNANDES (Nalanda) : But sumptuary is sumptuary.

SHRI RAMAKANT D. KHALAP: Yes. But there are other allowances.

SHRI GEORGE FERNANDES : I can understand if salary and allowances are enhanced or even if house is made available to them. But sumptuary allowance is meant for entertainment purposes. That is at Rs. 10/- and Rs. 17/- per day and that does not get changed for 10 years. After all, you fixed it at Rs. 10/- in 1986 and that has remained till 1996. That is the point.

SHRI RAMAKANT D. KHALAP : Sir, I would submit that we have to consider the sum total of the allowances and different benefits made available to the judges from time to time.

SHRI GEORGE FERNANDES : No.

SHRI RAMAKANT D. KHALAP : Secondly, Sir, I would also say that there is always room for improvement and so far as the judges are concerned, I would say that every effort should always be made to see that they do not suffer in any way, that their conditions of service are the best available and that they are able to function in an atmosphere where they will not have to look back for these small thing.

Sir, in the course of this debate, we talked about the pending cases in various courts, delay in the disposal of cases, vacancies of judges, transfer policy and so on. Now, it cannot be denied that there is a large mountain of cases pending in different courts. A little enquiry showed me that the number of cases pending in different courts in different parts of the country is around 2.30 crores. This is a Himalayan pendency. It is of Himalayan magnitude, I would ask. In fact, I myself indulged in some arithmetic in this case. I argued to myself that if there is about two-and-a-half crore case pending and if with each case about 10 people get involved on both sides then 25 crore population or more than one-fourth population of this country gets involved in litigations some way or the other.

A little more arithmetic - which I did for myself - showed that if with every litigant a family is involved, the entire population of the country, right from North to South and East to West, is directly or indirectly involved.

SHRI A.C. JOS (Idukki) : Going by your own arithmetic, are we not convinced even today that the number of judges in each court has to be increased? The position is similar to what it was when our Constitution came into existence. The population has increased and the number of cases has also increased. Therefore, I would urge upon the Government to bring in a new legislation by which number of judges in each court could be increased. I would request the Government to think about it.

SHRI RAMAKANT D. KHALAP : Sir, this is a argument and I am coming towards that argument itself. We are working under various constraints and the House knows it very well. What I was trying to point out is that having known that we have such a huge pendency, a concerted effort is required on the part of the Government, on the part of the judiciary, on the part of legal fraternity and even on the part of every citizen of this country to see that somehow this burden is reduced. The proportion of judges to the pending litigation here is abysmally low. But since we are working in a certain atmosphere and under the constraints which are surrounding us, a conscientious effort is required to be made. I cannot make a simple off the cuff remark that we will raise the proportion of the judges as it would involve financial expenditure, it would involve passing of the budget and so on. So, I would not make any commitment on that. It will have to be studied in detail.

Sir, there is no doubt that we have huge pendency. But is it the case that there is no solution whatsoever? Recently, I had an occasion to meet with the Chief Justice of India and I discussed with him this particular aspect. What emerged out of the discussion, I must share with the House. The Supreme Court under the leadership of the present Chief Justice of India over the last three years has undertaken an exercise which has resulted in reducing the pendency to just about 27,000 cases as on this day.

Let us imagine the pendency three years back; or the pendency about one year back. One year back it was more than one lakh. I was really surprised and amazed to see that this exercise in the court's management undertaken by the Chief Justice of India could give such a phenomenal result and such an exemplary result. I have a feeling that this particular exercise which the Supreme Court of India did in relation to its Court should be emulated by the various High Courts in the country so that at least that portion of litigation which is pending in the various High Courts of this country could similarly be reduced. What he did was a simple technique, a simple modern day management technique, of resorting to computerisation, resorting to classification of different cases, resorting to supervision from time to time, keeping the Bench for sufficiently longer period so that it deals with the allotted cases and deciding them. So, this particular result is for all of us to see.

The court has, in fact, summed up the entire work it has done in the form of graphs and in the form of statistics which are provided today. I am sure the type of work that our Supreme Court has done is commendable. I would request this House to take a note of this particular work that has been done by the Supreme Court of India. I would say that his should be done in the context of various arguments that came forward in the context of delay, in the context of corruption, in the context of various other issues including judiciary activism, etc. We must congratulate our Chief Justice of India and the Supreme Court. We must hope that what has been done in the Supreme Court, what has been achieved by the Supreme Court would also be achieved in a few years hence by the other courts of the country as well.

Now, I come to the question of vacancies of Judges. If the Supreme Court is able to reduce its cadre to this level, the Chief Justice tells me that, probably, within the next few months they may have surplus judges in the Supreme Court to decide the cases. See the situation : from one end, we are moving to the other end. There may be surplus Judges in the Supreme Court.

Some worthy hon. Members of this House were making a demand that we should have Benches of the Supreme Court in the South. *(Interruptions)*

SHRI BALAI CHANDRA RAY (Burdwan) : But the Chief Justice of India is responsible for the vacancies of 16 Judges in the Calcutta High Court. For the last eleven years, not even for one single day, the High Court has not worked with its full strength of 48 Judges. Now, the entire responsibility of recommending Judges is with the Chief Justice of India and two senior puny Judges. Therefore, who keeps the Judges' posts vacant? Since December 1994, after the judgment, it is the Chief Justice of India and two senior puny Judges who recommend, but they have not recommended. These vacancies are going on. How can the High Court do it? In the Calcutta High Court, at present, as on 30th November, 1995, the total pending cases is 2,30,000. Can they attend to them without filling up the vacancies?

SHRI SHIVANAND H. KOUJALGI (Belgaum) : There are many vacancies, but they are not being filled up for the last two or three years

SHRI RAMAKANT D. KHALAP : Sir, a few minutes back, I referred to the work done by the Supreme Court, and my hope and the hope of the Chief Justice of India are that the experiment which has been conducted in the Supreme Court shall be emulated by the other High Courts in our country. If this is emulated, I believe, in a year's time or in two years' time, the huge pendency in the other High Courts will simultaneously be reduced.

Coming to the vacancies in various High Courts, we all are aware that these vacancies in the Courts, transfer policy, all these things which were discussed in this House are not the work of one organ itself. No doubt, the Supreme Court today decides who should be transferred where, the number of Judges to be transferred from one Court to the other Court, and about the filling up of vacancies also. But the persons to be nominated as judges, this issue is to be cleared by the concerned Judges of the Supreme Court, by the concerned Chief Minister and by the concerned Governor of the area. So, when all these three come to a conclusion that a particular person is to be appointed, his appointment takes place.

I must tell you that the moment I took over as the Law minister, my Ministry has decided that not only shall we take steps to fill up all the vacancies existing in the various High Courts, but we shall also see that we keep track of the impending vacancies because of retirement of the Judges at some time or the other. Six months before the date of retirement of a Judge, before the occurrence of a vacancy on account of this, it will be noted by the Ministry and we shall initiate steps to see that no sooner a vacancy is created than it is filled up. I hope that this does not remain only as a pious hope on my part.

SHRI BALAI CHANDRA RAY : The date of retirement of a Judge is known the day he is appointed.

SHRI RAMAKANT D. KHALAP : That is what I said. Since it is known, we shall see to it that, at least six months in advances, we remain prepared to fill up that particular vacancy.

SHRI P. UPENDRA (Vijayawada) : So many times, that assurance was given.

SHRI RAMAKANT D. KHALAP : Some hon. Members referred to corruption among Judges. They also referred to the so-called encroachment by the judiciary on the rights of this House. I would not like to go into the merits and demerits of these allegations. But I will make a statement that, by and large, our judiciary is one of the best in the world. My Government and I have full faith in India's judiciary. As someone said, there may be black sheep among them. There have been allegations against the hon. Members of this House also. Just as there may be good people and some bad people amongst us, there may be some such cases in the judiciary also.

There may be some case. But each of such cases has to be dealt with as a separate case. We cannot generalise and if we adopt any policy by which we generalise and say that judiciary has become corrupt, we shall not only be affecting the functioning of the courts, but the very foundations on which the democracy rests will also be damaged. It is necessary that we create an impression in the minds of people and sustain that impression that judiciary is occupying the highest place in democracy and that justice is available to all of us. Let us be very clear about this particular point.

A remark was made, rather a demand was made, that a Commission of Inquiry be appointed. It is not in my hands to respond to this demand. Shri P.R. Dasmunsi referred to the appointment of a Commission of Inquiry to inquire into the assets of all judges, of all Ministers and of all hon. Members. I even heard somebody saying that it should be extended to all bureaucrats and everybody. This is a very wide question. At some time or the other, probably the House may consider in a better perspective and at better times and come to any conclusion. Whatever conclusion the House comes to will naturally be binding upon me and you also ...*(Interruptions)*

Similarly, it is difficult to comment on judicial activism. We have seen judiciary evolving in different parts of the world. It is a process of evolution and at different times, in different places, judges have risen to the occasion. They have expanded their jurisdiction in some cases. Sometimes it has been inevitable and wherever it has not been inevitable, it has been open to criticism which hon. Members have resorted to. Someone has said that just as we have our constituency to look after, the judiciary has a wide constituency which

extends to the whole of the country and they must take care of that constituency which is the people of this country.

SHRI MANORANJAN BHAKTA (Andaman and Nicobar Islands) : The question is not about judiciary. The question is about the irrelevant remarks made about Parliament and Legislature. That is the point.

SHRI RAMAKANT D. KHALAP : That is how I look at it. I will look into whatever criticism that has been levelled here. I will look at it not as a general statement but as a statement which can be attributed to a particular institution.

SHRI SOMNATH CHATTERJEE (Bolpur) : It is because we got proper response from the court.

SHRI RAMAKANT D KHALAP : Considering all these points, although Shri Suresh Prabhu has said that too little was given too late, I would still assure Shri Suresh Prabhu and other hon. Members of this House that we are making conscious efforts to improve the conditions of service of the judiciary. There is a National Judicial Pay Commission appointed. This Commission will look into the conditions of service of the subordinate judiciary in different parts of the country and all of us with the active support of one another be able to tackle the problems that are facing us.

With these words, I request Justice Guman Mal Lodha to withdraw his statutory motion. I request this House to pass this Bill unanimously.

[Translation]

JUSTICE GUMAN MAL LODHA (Pali) : During discussion on the present Bill and the ordinance, many important issues have come up before the House. Most of the Mumbers expressed their opinion about the Judiciary as the hon. Minister has stated, that we are proud of the judiciary of India, and that it enjoys the highest place in the world. But I am sorry that some Members because of their vested interests, tried to look down upon the judiciary in a manner that showed that they were either ignorant of the highest regard that our learned constitution framers like Pt. Jawaharlal Nehru and Ambedkar accorded to the judiciary in our Constitution or they are deliberately not taking cognisance of this fact in a bid to undermine the dignity of this House.

[English]

SHRI NIRMAL KANTI CHATTERJEE (Dumdum) : He has said about the black sheep and not about you.

[Translation]

JUSTICE GUMAN MAL LODHA : First of all, I would like to submit that the Article 121 and 122 of the Constitution are very important. Article 122 lays down that the judiciary would not intervene in any way in the work done in this House. How the speaker regulate the business of the House, whom he allows to speak, which Resolution was passed or not, about all this internal management, the Article 122 of the Constitution state:

[English]

> "122 (1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure
>
> (2) No officer or Mumber of Parliament in whom powers are vested by or under this constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers."

[Translation]

That is why, whenever any notice is received against the Speaker. The Speaker, as per our convention, does not reply to it, because he is not answerable to the jurisdiction of the Supreme Court or the High Court. But to maintain the highest dignity of our judiciary it has been enunciated in Article 121 of the Constitution that-

[English]

> "No discussion shall take place in Parliament with respect to the conduct of any judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided."

[Translation]

Sir, this Constitution was framed by our Constituent Assembly. We can make amendments in our Constitution to a limited extent. After the judgements in the cases of Keshvanand Bharati and Minerwa Mills, it was decided that the Parliament, except the basic features of the Constitution, can amend the other parts if it so desires. If some one brings forward the Constitution Amendment Bill and express his own opinion thereon, there would be no objection to it but so long as Article 121 and 122 of the constitution are there, my submission is that it would be most important if we criticise the judgement given by the Supreme Court and held binding on all in accordance with the Articles 141 to 144 of the Constitution. However, where the questions of the rights of the Parliament cropped up in those judgements e.g. land reforms, certrain laws in respects thereof have been annulled. They were, however validated subsequently by a constitutional amendment or the incorporation of the Ninth Schedule. When the question of legislation arose, many laws were declared null and void but the Parliament, in exercise of their powers, made laws in respect thereof subsequently.

In 'Shah Bano's case, the Supreme Court gave its verdict but we annulled the Supreme Court's verdict on the plea of womens' rights. It is right that if any judgement falls within our preview, we can declare it null and void by enacting suitable legislation. But it is very unfortunate to say here that in a verdict only a days' sentence was given whereas the sentence should have been more. There cannot be anything more unfortunate than to say here on the floor of this House that for contempt of Court, Comrade Namboodaripad was only fined while in the case of Shri Kalyan Singh he was given only one day's sentence and not more. This way we shall be going beyond our jurisdiction.

15.00 hrs.

Mr. Deputy Speaker, Sir, not only this, by acting in that manner we shall be violating Article 121 of the Constitution and committing the contempt of the Constitution as also the judiciary and undermining the dignity of the House.

Sir, if we want to change the system of the judiciary and if it is within our rights, then there can be no objection to our doing it but how ridiculously and shameful it is that a party makes a reference under Article 143 of the Constitution and Shri Munshi, an hon. Member, from West Bengal belonging to that party ridicules it here. Why was this reference made, and who asked for it? The reference was, however, made by the Government and thereafter, the Supreme Court gave its verdict thereon. They gave a definition of the secularism. You may agree with this definition or not. If you don't agree, you may change it by bringing in a Constitution amendment but to ridicule and criticise it here, saying that judges have no right to define Hindutva in the Supreme Court, is not at all in order.

Sir, it is you who have given the right. Pt. Jawaharlal Nehru and Dr. Ambedkar have given it. Shri Atal Bihari Vajpayee and Shri Somnath Chatterjee have not given it. This right has been given by the Constitution. You may withdraw it. If you have any objection to the definition of Hindutva, you may review it. If your review petition is not accepted, try to amend it here, if you can. If you cannot, then you will have to follow Article 141, 142, 143 and 144 of the Constitution.

15.02 hrs.

(Shri Chitta Basu *in the Chair*)

We did in the case of Shah Bano. There is no objection to it. There may be difference of opinion but Parliament had the right and the Parliament exercised that right. The majority may differ but my submission is that, as stated here, if we start saying that in the case of Ayodhya episode, there is contempt of court and start discussion whether the judgement of the court was right or wrong, whether punishment awarded was proper and adequate or not or say that what happened in Ayodhya was a part of liberation struggle and a plot has been removed from the face of the nation, these are all matters of opinion. Shri Ram Manohar Lohia, in one of his books, wrote that our ancestors were weak, timid and were lacking in courage who tolerated such insult so long. These are all individual opinions and there can be differences also in such opinions. But if we speak in terms of insults, aspersions, defamations and say that the Supreme Court let of Kalyan Singh by awarding him a day's sentence, it amounts to ridiculing the Supreme Court. If we try to understand what the Constitution is, what our values are and what our rights are, we will come to know that we have many rights and that our Constitution is sovereign. Our Parliament is not sovereign. Our Constitution is sovereign or the constituent of Parliament. There is great controversy as to how to make use of the constituent of Parliament. If today judiciary tries to change the basic feature of the constitution, it will not be able to do so because of the judgement in the case of Keshvanand Bharati. You cannot change them. Such an attempt had been made in the past. You will recollect that during emergency such a decision had been taken here. We can annul by law the judgement of the Allahabad High Court on the election petition filed by Shri Rajnarain against Smt. Indira Gandhi.

Sir, there cannot be the greater insult or mockery of Parliament. Than one that the judgement of the Allahabad High Court was reversed by the Supreme Court itself and that too on merits. It is, of course a fact that the petition filed by Shri Rajnarain has dismissed on merits but the Supreme Court also said that the Parliament had no right to sit in judgement of the Allahabad High Court verdict and alter it. I would like to ask my friend Shri Munshi whether he had raised an accusing finger against it at that time? Did he have the courage to say at that time that what was being done was unjustified, unconstitutional and amounted to throwing the rule of law to winds? At that time, it did not occur to him but today, he says that the sentence awarded in the Ayodhya episode was not adequate. I would submit that such question should not be raised here now.

We should follow our Constitution in its letter and spirit. Sovereignty is very important. Over sovereignty, we take decisions time and again. I would like to cite an example for the benefit of Shri Munshi. A very interesting incident took place in Allahabad. A journalist, Shri Keshar Singh published a report in the newspaper there. The Assembly there moved a privilege motion against him and awarded punishment to him. When the privilege motion came up before the Assembly, it adopted it and he was sentenced to 7 day's imprisonment. When he was lodged in the jail, an advocate, Solemen, filed a writ petition against the said action of the Assembly on the plea that it was the fundamental right of a journalist under Article 226 and, therefore, he cannot be punished. As such, two judges of the Allahabad High Court granted him bail. When he was taking the bail order to the jail, there was an uproar in the Assembly. Members pointed out to the speaker that is was violation of his order as he was seeing the

journalist concerned to the jail and the High Court was letting him off. The Members further stated that the judiciary had no right to do so as the Assembly was above the judiciary and demanded that the judges concerned be produced before the Speaker, a privilege motion be adopted against them and they be sent to jail...*(Interruptions)* Somnathji, you know things very well since you are a barrister. Since you know the law, you at once agreed with me. In the Assembly, it was said that both the judges be arrested and produced before the Speaker. When warrants were sent for those two judges, 57 judges of the Allahabad High Court granted the said two judges bail and said that these two judges cannot be arrested and the bailiff of the Speaker of the Assembly was sent back. When the bailift returned, the Assembly sat again and the Speaker said "Now we have to take a decision that these 57 judges be arrested and produced before me." It is a very interesting case ...*(Interruptions)*.

SHRI P.R. DASMUNSI : The Chief Justice of Bombay High Court was sent back to Bengal...*(Interruptions)* Why was action not taken against him?...*(Interruptions)*.

JUSTICE GUMAN MAL LODHA : You take action.

SHRI P.R. DASMUNSI : Why should we do it? Why does not judiciary take action? George Saheb said ...*(Interruptions)* it is not enough. If we had taken that action...*(Interruptions)* Being politicians we knows it very well...*(Interruptions)* Are they the sons of god?

JUSTICE GUMAN MAL LODHA : The Chief Justice of Madras has been lodged in the jail...*(Interruptions)*

[English]

SHRI P.R. DASMUNSI : You tell me why the Chief Justice of the Bombay High Court had to suddenly go back to Calcutta.

JUSTICE GUMAN MAL LODHA : I am not yielding.

[Translation]

The Chief Justice of the Madras High Court has been sent to the jail on charges of corruption. A case is still pending against him in the Madras High Court. No one is above law. If there is a case against Shri Bhattacharya, then the CBI should have lodged him in the jail. He belong to Calcutta.

If there was any case against the Chief Justice, The Bengal Government should have indicated the legal action against him...*(Interruptions)*

SHRI SOMNATH CHATTERJEE : Bring the Bengal Government here in the Centre and everything will be all right.

JUSTICE GUMAN MAL LODHA : Mr. Deputy Speaker, Sir, I an telling you the story of the conflict that took place between the judiciary and the legislature. When the U.P. Assembly in its sitting in Allahabad, tried to take a decision for the arrest of 57 judges and there production before the Speaker, a message was send to the President. It is something very unfortunate. Judiciary is ours, legislature is ours the executive in also ours. We have framed the Constitution and the Constitution is being throun to winds.

The President made a reference under Article 143 and I want to tell you about this reference. Shri P.R. Dasmunsi may read it in full as and when he finds time. The judgement given by Gajendra Gudkar, Chief Justice, concerning the right of the judiciary and the legislature and what action need to be taken in case of conflict between them may be seen in AIR 1965 SC Under Article 143, Constitution of India. Shri Gajendra Gudkar had given this judgement after hearing the argument on all the issues involved for about a month. I will not take your time by reading it here. The hon. Members interested in it may read it. It ought to be read...*(Interruptions)* In Article 194, the privileges of the Members of the Legislative Assembly and the Parliament have been enunciated. On one side, there is Assembly and on the other, there is judiciary. Article 122, 123 lay down...*(Interruptions)* He said that the Parliament should define its privileges. I will request the Honourable Member to consider this matter. Somnathji, this decision was taken in 1965. Yesterday, the Hon. Member said that the Parliament was in session but I was not allowed to come from the court. If a privilege is codified that when Parliament is in session, whatever be the case whether it is preventive detention or TADA or any other case, a member would have the right to come here and speak and in this way, the judiciary would be compelled to abide by it. If the privilege is not codified, then it would be the discretion of a judge to send a Member of Parliament or not...*(Interruption)* Many Members sitting here were in jail but when Parliament session started, they were allowed to come here. This decision was taken in 1965. Speakers' conferences were held one after the other. *(Interruptions)* Everytime it was decided that we would not codify the privileges because if we codify...*(Interruption)*

[English]

SHRI SOMNATH CHATTERJEE : Even the privileges committee of this Parliament has decided that it would not be codified.

JUSTICE GUMAN MAL LODHA : I will tell you the reason why it decided so.•

SHRI SOMNATH CHATTERJEE : Who are you to give the reason?

JUSTICE GUMAN MAL LODHA : I will give you the reply.

[Translation]

Nobody wants to limit his rights. The judges of the Supreme Court repeatedly say that...*(Interruptions)*

Article 226 says that it will not be codified. Therefore, in the Speakers' conference and as also in the privileges committee, it was decided that we will not codify it and when it is not codified.

[English]

'Law is nothing but uncodified common sense and codified nonsense.'

[Translation]

You may codify anything and it would become a law...*(Interruptions)*

[English]

SHRI SOMNATH CHATTERJEE : Sir, this is a Bill on ... *(Interruptions)* He has gone on to speak about the privileges... *(Interruptions)*

MR. CHAIRMAN : We are discussing a particular Bill whether the Ethics Committee should not be there, is a separate subject.

(Interruption)

SHRI RAMESH CHENNITHALA (Kottayam) : Mr. Chairman, Sir, he has extended the scope of the discussion.

MR. CHAIRMAN : Your case is, you want that the privilege should be codified. That is enough.

[Translation]

JUSTICE GUMAN MAL LODHA : I am making a suggestion. As suggested by the Supreme Court, MPs and M.L.As should form an All India Committee or Commission to codify the privileges and should end their controversy once and for all. When this controversy is resolved, we as well as the Judiciary would know where we actually stand. *(Interruption)*

If we have become Members of Parliament it does not mean that...*(Interruption)*

[English]

MR. CHAIRMAN : That is alright. This is your suggestion. The government would consider it.

[Translation]

JUSTICE GUMAN MAL LODHA : I was submitting that the Supreme Court's decision of 1965 was a very good decision which would serve as a guide for us. We should read it and follow it in into true letter and spirit so that no such ambiguity exists in future. A lot has been said about the judicial activism, judicial activism is a vast subject. I have written some books on it, namely 'Nyayapalika Ki Agni Pariksha', Law, Morality and politics' and one another book 'Judiciary Fumes, Flames and Fire'. It runs into one thousand pages. I will gift it to the library. This book may be read but I would like to submit...*(Interruptions)*

[English]

MR. CHAIRMAN : Shri Lodhaji, please listen to me. You have to reply only to the questions or points raised by the Hon'ble Minister. You cannot bring any subject under the sky.

(Interruptions)

[Translation]

JUSTICE GUMAN MAL LODHA : You may guide us in between.

SHRI SOMNATH CHATTERJEE : You will not pay sumptuary allowance to the judges. Petrol is consumed more now-a-days. Will you provide them petrol?

JUSTICE GUMAN MAL LODHA : Somnathji we shall accept your proposal. You were not present during the debate, otherwise

(Interruptions)

SHRI SOMNATH CHATTERJEE : I watched it on T.V.

JUSTICE GUMAN MAL LODHA : The hon'ble Minister has replied only those questions which came up here during the debate. He has replied to the debate only and I am doing the same thing.

Here, it was said that an FIR was lodged and thereafter, the High Court asked to lodge the FIR of the complaint. It is not a question of the privileges of the High Court. The High Court should not do it. I would not go into the question as to what the High Court should do and what it should not do. You may appear to the Supreme Court but the direction of the High Court to lodge the F.I.R. in the form of a complaint once the FIR is lodged, is wrong because in it some politicians and the sons of former Prime Minister and others are involved. Therefore, it would not be proper and the part of this House to denigrate or insult the judiciary ...*(Interruptions)*

[English]

SHRI SOMNATH CHATTERJEE : He has to reply only to the question whether the ordinance should have been issued issued or not. That is the only question.

[Translation]

JUSTICE GUMAN MAL LODHA : It was said here that if the court issued warrant, summons, against Shri Narasimha Rao, he should go to the High Court. The High Court may cancel the summons after asking for the record. Thereafter one may go to the Supreme Court. If a judge has issued the summons, and we object to it just because the man summoned happen to be the former Prime Minister, then it would not be a rule of law but a rule of the jungle.

[English]

MR. CHAIRMAN : How much time do you want?

JUSTICE GUMAN MAL LODHA : I will take half an hour to reply to the points which have been raised...*(Interruptions)*

[Translation]

I will conclude. Private members Bill will be taken up here at 3.30 P.M. *(Interruptions)*

[English]

MR. CHAIRMAN : Now we are in the concluding stage of the debate. I think you should cooperate.

JUSTICE GUMAN MAL LODHA : Many questions have been raised..*(Interruptions)*

MR. CHAIRMAN : Now, we expect the hon. members to extand cooperation to the House. The Private Member's Business has to be taken up at 3.30 P.M. Naturally, we expect that this Bill will be adopted before 3.30 P.M.

(Interruptions)

JUSTICE GUMAN MAL LODHA : I would conclude provided I am not interrupted. If I am interrupted, I would go up to Monday...*(Interruptions)*

MR. CHAIRMAN : There are some amendments also. They have to be cleared. Please see that it is completed by 3.30 p.m.

[Translation]

JUSTICE GUMAN MAL LODHA : Here a reference about the birth of lord Rama was made in a derogatory manner. Who knows where the birth of lord Rama, Mohammad Sahib or Jesus Christ took place. It is all a matter of mythology. There are certain real facts with which are associated many feelings. It is not proper to decide these matters here or make any reference. I would like to know from Shri P.R. Dasmunsi which Government had made the reference whether it was done by the B.J.P. Government or the Narasimha Rao Government. Today again, a reference in being made under 138, whether it would be done or not is a different matter. But since a reference was made, I made a mention of it.

Whether lord Rama was born in Ayodhya or Rama temple was built in Ayodhya or not is a question based on our beliefs and sentiments. Will anybody doubt whether Mohammed Sahib had gone to Makka Madina or not? Will any commission be appointed to investigate it and will Shri P.R. Dasmunsi make enquiries from it?

SHRI NITISH KUMAR (Barh) : Mr. Chairman, Sir, we are also Members of this House and during the deliberations of the House, I would like to know as to what this Bill has to do with Ayodhya?

JUSTICE GUMAN MAL LODHA : You please listen to me.

[English]

Why were you sitting idle at that time?

[Translation]

SHRI NITISH KUMAR : A minute's deliberations of Parliament cost the nation Rs. 50,000.

[English]

SHRI RAMESH CHENNITHALA : Sir, his entire speech is now dependent on the Ayodhya issue. What is happening in the House now?

MR. CHAIRMAN : Shri Lodha, you have assured me

(Interruptions)

[Translation]

SHRI NITISH KUMAR : Will it go on like this?

[English]

MR. CHAIRMAN : Shri Nitish Kumar, he will conclude. He has assured me that he will conclude. Shri Lodha, please conclude.

[Translation]

JUSTICE GUMAN MAL LODHA : I am concluding but they are not allowing me to speak. The hon'ble Minister did not raise this objection when they were speaking about Lord Rama. We say that Lord Rama was born in Ayodhya itself and therefore Lord Rama's temple should be constructed there. If Lord Rama's temple would not be built there, will it be built in Japan or in London or Makka-Madina.

"Awadhesh ke dwar sakaye mikase,
Angan yah sochat ki Vimochan Ki Kati Tulsi Manoranjan,
Angan nainsutch Khanjan"

Tulsidas has described it. Maithilisharanji has also described it.

[English]

MR. CHAIRMAN : This is not fair. Shri Lodha, please resume your seat for a minute. It is not fair on my part to request the hon. Member to speak to the point, again and again. This is my last request to you. Shri Lodha, As an hon. Member of this House, you should restrict yourself within the purview of the Bill.

(Interruptions)

SHRI G.M. BANATWALLA : So, whatever he said outside the purview of the Bill should be expunged from the record..*(Interruptions)* There should be nothing.

[Translation]

JUSTICE GUMAN MAL LODHA : We do not make any difference between Makka-Madina and Ayodhya.

[English]

SHRI G.M. BANATWALLA : Sir, he is misusing the floor of the House. This is a total misuse of the floor of the House. There are certain limits. Mr. Chairman, what is going on in the House?...*(Interruptions)*

MR. CHAIRMAN : Please conclude.

[Translation]

JUSTICE GUMAN MAL LODHA : He does not know that on the 16th Aug. 1946, five thousand people had been killed by Sohrawardi...*(Interruptions)*

[English]

MR. CHAIRMAN : It is not related to the subject

(Interruptions)

[Translation]

JUSTICE GUMAN MAL LODHA : How was Pakistan formed? How were atrocities perpetrated? He does not know anything about these things...*(Interruptions)*. A country was divided into two parts. He has no objection to it. He is unaware of this. It is because of lack of knowledge that Shri Munsi is dragging the name of Lord Rama into it...*(Interruptions)*

[English]

MR. CHAIRMAN : You please sit down.

(Interruptions)

MR. CHAIRMAN : Mr. Dasmunsi, you must seek permission from the Chair to speak.

(Interruptions)

SHRI P.R. DASMUNSI : Sir, you must know what he had said *(Interruptions)*

[Translation]

JUSTICE GUMAN MAL LODHA : You partitioned and auctioned the country...*(Interruptions)*

[English]

MR. CHAIRMAN : That means you are not going to conclude today

[Translation]

JUSTICE GUMAN MAL LODHA : The congress has ruined this country. They have disintegrated this country and have indulged in a lot of bloodshed everywhere and at Dharmatala too. You perhaps do not know it. Today they say here that Lord Rama was not born in Ayodhya. Eighty percent of our people say that Lord Rama was born in Ayodhya and his temple would be built in Ayodhya itself. Nobody on the earth can stop it...*(Interruptions)*

SHRI NITISH KUMAR : Everything will happen but the judges will not get the petrol...*(Interruptions)*

JUSTICE GUMAN MAL LODHA : Judge would get the petrol and they would also make enquiry. A reference was made here about Jharkhand Mukti Morcha. You gave crores of rupees to the Jharkhand Mukti Morcha and also engineered defections. Why did you resort to defections? Before conclude, I would say that we should provide all facilities to the Supreme Court judges, Munsi Magistrates of High Courts and District Judges because in reality they are our Constitution and the Supreme Court has the most important role to play, as include Lord Rama had said :

"Nishicharheen Karron mahi, Kani utha bhujdand."

With these words, I conclude and withdraw the resolution moved by me to oppose this ordinance.

[English]

MR. CHAIRMAN : Mr. Lodha, are you withdrawing?

SHRI RAM NAIK : Sir, he is seeking permission to withdraw the Resolution.

[Translation]

JUSTICE GUMAN MAL LODHA : Sir, I withdraw the resolution moved by me to oppose the ordinance and appeal to the House to pass the Bill.

[English]

I seek the leave of the House to withdraw my Statutory Resolution.

MR. CHAIRMAN : Does the hon. Member have the leave of the House to withdraw his Statutory Resolution?

SEVERAL HON. MEMBERS : Yes

The Resolution was, by leave, withdrawn.

MR. CHAIRMAN : As it is 3.30 P.M. now, does the House agree to pass this Bill within five to six minutes?

SEVERAL HON. MEMBERS : Yes.

MR. CHAIRMAN : The House will now take up motion for consideration of the Bill.

The question is :

> "That the Bill further to amend the Supreme Court Judge (Conditions of Service) Act, 1958 and High Court Judges (Conditions of Service) Act, 1954, be taken into consideration."

The motion was adopted.

MR. CHAIRMAN : The House will now take up Clause-by-Clause consideration of the Bill.

SHRI RAMAKANT D. KHALAP : Sir, since there are a few amendments, I would make an appeal to the Members not to move their amendments.

Clause 2

MR. CHAIRMAN : Mr. Satya Pal Jain, are you moving your amendment?

(Interruptions)

SHRI RAM NAIK : Since he is not moving, there is no question of withdrawal.

MR. CHAIRMAN : So, nobody is moving their amendments.

The question is :

"That Clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

MR. CHAIRMAN : Now, there are amendments to Clauses 3, 4 and 5. I hope anybody wants to move the amendments.

The question is :

"The Clause 3, 4, 5 and 6 stand part of the Bill."

The motion was adopted.

Clauses 3, 4, 5 and 6 were added to the Bill.

MR. CHAIRMAN : The question is :

"That Clause 1 the Enacting Formula and the title stand part of the Bill"

The motion was adopted.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI RAMAKANT D. KHALAP : I beg to move :

"That the Bill be passed."

MR. CHAIRMAN : Motion moved :

"That the Bill be passed."

[Translation]

SHRI GEORGE FERNANDES : Mr. Chairman, Sir, I do not want to take much time. I had given notices of amendment for two clauses. Keeping in view the necessity of passing the Bill, we did not place before you these two amendments, otherwise we wanted a division in the House on them. The Hon'ble Minister said certain things about this Bill. We agree with some of them and do not agree with rest of the things. But we would certainly like to Hon. Minister to take due note of the intentions of or amendments and take appropriate action on them.

My amendment is for two clauses. It bertains to the High Court and the Supreme Court. After ten years, these people will get from Rs. 10 to Rs. 15 or Rs. 20. They need not wait for 10 years but we should fix the amount to be paid to them in the same proportion in which prices are likely to increase. Just as prices increase after 6 months, we should increase the amount of the sumptuary allowance. The hon'ble Minister, it is hoped, would consider the matter seriously and bring about the needed improvement in the judiciary. He should bring forward the necessary Bill at the earliest to bring about necessary reforms in the judiciary as also in law and order.

[English]

SHRI RAMAKANT D. KHALAP : Mr. Chairman, Sir, I am engaged in taking an entire review of the judicial reforms which are pending. I do appreciate the points raised by the hon. Member Shri George Fernandes.

MR. CHAIRMAN : The question is :

"That the Bill further to amend the Supreme Court Judges (Conditions of Service) Act, 1958 and the High Court Judges (Conditions of Service) Act, 1954, be passed."

The motion was adopted

15.37 hrs.

PRIVATE MEMBERS BILLS

[English]

MR. CHAIRMAN : Now, we shall take up Private Members' Business. Bills for introduction.

Shri Amar Pal Singh.

PRIVATE INVESTIGATIORS BILL

[Translation]

SHRI AMAR PAL SINGH (Meerut) : Sir, I beg to move for leave to introduce a Bill to provide for the licensing of private investigators and vest them with certain powers.

MR. CHAIRMAN : The question is :

"That leave be granted to introduce a Bill to provide for the licensing of private investigators and vest them with certain powers."

The motion was adopted

[Translation]

SHRI AMAR PAL SINGH : Sir, I introduce the Bill.

15.38 hrs.

CRIMINAL LAWS (AMENDMENT) BILL

[English]

SHRIMATI GEETA MUKHERJEE (Panskura) : I beg to move for leave to introduce a Bill further to amend